

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

<b>ADVANCEME, INC.</b>	§	
	§	<b>Civil Case No. 6:06-CV-82</b>
<b>VS.</b>	§	
	§	<b>Davis</b>
<b>AMERIMERCHANT LLC</b>	§	

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**DEFENDANTS AMERIMERCHANT, LLC AND FIRST FUNDS, LLC’S  
MOTION TO EXTEND FACT DISCOVERY DEADLINE AND FOR  
EXPEDITED CONSIDERATION**

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Defendants AmeriMerchant LLC and First Funds, LLC (Corporately referred to as “Defendants”) hereby move to extend the fact discovery deadline in the above-captioned cause, and for expedited consideration of the said motion to extend, and would show the Court as follows:

1. The parties’ current deadline for all fact discovery in this matter is presently set for **July 17, 2007**<sup>1</sup>

2. This present deadline falls squarely in the middle of the dates set for trial in the matter styled Cause No. 6:05-CV-424 (LED-JDL) *AdvanceMe, Inc. v. RapidPay, LLC, Business Capital Corporation, , Merchant Money Tree, Inc., Reach Financial, LLC and Fast Transact, Inc. d/b/a Simple Cash* presently pending in the United States District Court for the Eastern District of Texas—Tyler Division (hereafter referred to as the “RapidPay case”) . The trial for the RapidPay case is presently set to begin on July 16, 2007. Counsel for both parties in this matter are actively involved in the trial of the RapidPay case.

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<sup>1</sup> Pursuant to Docket Control Order dated July 5, 2006 (dkt 20 ).

3. Pursuant to the Court's Order of July 2, 2007, Defendant First Funds, LLC and all claims made by Plaintiff AdvanceMe regarding First Funds, LLC have been moved to the above-captioned cause.

4. Also, pursuant to the Court's July 2, 2007 Order, the Court ordered the parties to craft an Amended Docket Control Order in the above-captioned cause to be submitted on or before August 1, 2007. This Amended Docket Control Order was to modify the deadlines in this case to allow for the additional discovery outlined in the Court's Order and also any ancillary discovery that may arise pursuant to this additional discovery.

5. In keeping with the Court's Order, Defendants have asked Plaintiffs to extend the present fact discovery deadline until September 30, 2007 to allow for the upcoming RapidPay trial and to further allow for any additional discovery in this case that may arise from or as a result of the related RapidPay matter. Plaintiff has responded that they are not willing to extend the fact discovery deadline in this manner. Plaintiffs further indicated in discussions on this issue that they would be amenable to extensions of limited discovery deadlines (extension of deadlines to take depositions of specific persons previously identified by Defendants) but would not agree to an extension of the fact discovery deadline as a whole. Defendants, however, desire for the entire fact discovery deadline to be extended, without limitation, to allow for all parties in this case to opportunity to participate in discovery regarding the new issues present as a result of the inclusion of First Funds, LLC as a Defendant.

6. Compounding the problem, the present fact discovery deadline in this case is presently July 17, 2007. This date falls over 14 days before the newly ordered deadline for the parties to submit an Amended Docket Control Order on August 1, 2007. As a

result of this situation, Defendants have found no other option but to bring this Motion before the Court for expedited resolution. Defendants therefore respectfully request that the Court order expedited briefing and set these motions for hearing at its earliest available date, and that following such expedited hearing, the court enter an order extending the fact discovery deadline in this case to September 30, 2007.

7. It is anticipated that once a ruling is issued on the extension of the discovery deadline, as plead in this Motion, all other issues regarding the Amended Docket Control Order will be able to be resolved between the parties on or before August 1, 2007, in keeping with the Court's Order of July 2, 2007.

8. The extension of the fact discovery deadline in this case to September 30, 2007 would also allow for additional time for all parties to ascertain and complete all discovery in this case. By adding a new party to the present case in the form of Defendant First Funds, LLC, the need for additional time for fact discovery is clearly warranted.

9. Further, to allow the Plaintiff additional time to pursue extensive discovery on the issues now present in this case regarding the addition of Defendant First Funds, LLC and, at the same time, prevent co-Defendant AmeriMerchant, LLC the opportunity to conduct additional discovery regarding these new allegations, or pursue additional discovery on witnesses or documents that may emerge from this newly expanded discovery in the case would lead to an unfair advantage for Plaintiff in the above-referenced cause.

9 The parties are diligently working on completing their fact discovery in this matter; however, as a result of the Rapid Pay case and its present trial setting on July 16, 2007 and the involvement of both counsel for Defendants and Plaintiffs in that case;

the addition in this case of a new Defendant in the form of First Funds, LLC; and in keeping with the requirements of the Court's July 2, 2007 Order and all parties' commitment to the fulfillment of the same, the Defendants respectfully request that the fact discovery deadline be extended until September 30, 2007.

This extension is requested not for purposes of delay, but to allow the parties adequate time to conduct fact discovery on the matters in suit.

Therefore, Defendants respectfully request that the Court order expedited briefing and set these motions for hearing at its earliest available date, and that following such expedited hearing, the court enter an order extending the fact discovery deadline in this case up to and including **September 30, 2007**.

Submitted: July 3, 2007

Respectfully submitted,

By: /s/ Douglas R. McSwane, Jr.

Douglas R. McSwane, Jr.

State Bar No. 13861300

**POTTER MINTON**

A Professional Corporation

110 N. College

500 Plaza Tower (75702)

P.O. Box 359

Tyler, Texas 75710

Telephone: 903.597.8311

Facsimile: 903.593.0846

E-mail:

[dougmcswane@potterminton.com](mailto:dougmcswane@potterminton.com)

**ATTORNEYS FOR DEFENDANTS  
AMERIMERCHANT, LLC and  
FIRST FUNDS, LLC**

-and-

William G. Schuurman

Texas State Bar No. 17855200

[bschuurman@velaw.com](mailto:bschuurman@velaw.com)

Joseph D. Gray

Texas State Bar No. 24045970  
[jgray@velaw.com](mailto:jgray@velaw.com)  
**VINSON & ELKINS L.L.P.**  
2801 Via Fortuna, Suite 100  
Austin, Texas 78746  
Telephone: 512.542.8400  
Facsimile: 512.236.3476

-and-

Hilary L. Preston  
[hpreston@velaw.com](mailto:hpreston@velaw.com)  
**VINSON & ELKINS L.L.P.**  
666 Fifth Avenue – 26th Floor  
New York, NY 10103  
Telephone: 212.237.0000  
Facsimile: 212.237.0100

**ATTORNEYS FOR DEFENDANTS**  
**AMERIMERCHANT, LLC and**  
**FIRST FUNDS, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record who have consented to electronic service and are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this the 3<sup>rd</sup> day of July, 2007. Any other counsel of record will be served by first class mail on this same date.

/s/ Douglas R. McSwane, Jr. \_\_\_\_\_  
Douglas R. McSwane, Jr.

**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that counsel for Defendants has conferred with counsel for plaintiff in a good faith attempt to resolve the matter of this motion without court intervention but was unable to reach any agreement. Plaintiff opposes this motion.

/s/ Douglas R. McSwane, Jr.  
Douglas R. McSwane, Jr.